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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/621,062	07/16/2003	Ricky B. Steck	13646.10	8837
22913	7590	10/11/2005	EXAMINER	
WORKMAN NYDEGGER (F/K/A WORKMAN NYDEGGER & SEELEY) 60 EAST SOUTH TEMPLE 1000 EAGLE GATE TOWER SALT LAKE CITY, UT 84111			RODRIGUEZ, WILLIAM H	
			ART UNIT	PAPER NUMBER
			3746	

DATE MAILED: 10/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

6

<b>Office Action Summary</b>	<b>Application No.</b> 10/621,062	<b>Applicant(s)</b> STECK, RICKY B.	
	<b>Examiner</b> William H. Rodriguez	<b>Art Unit</b> 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-32 is/are allowed.
- 6) ☒ Claim(s) 33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____. | 6) <input type="checkbox"/> Other: ____.  |

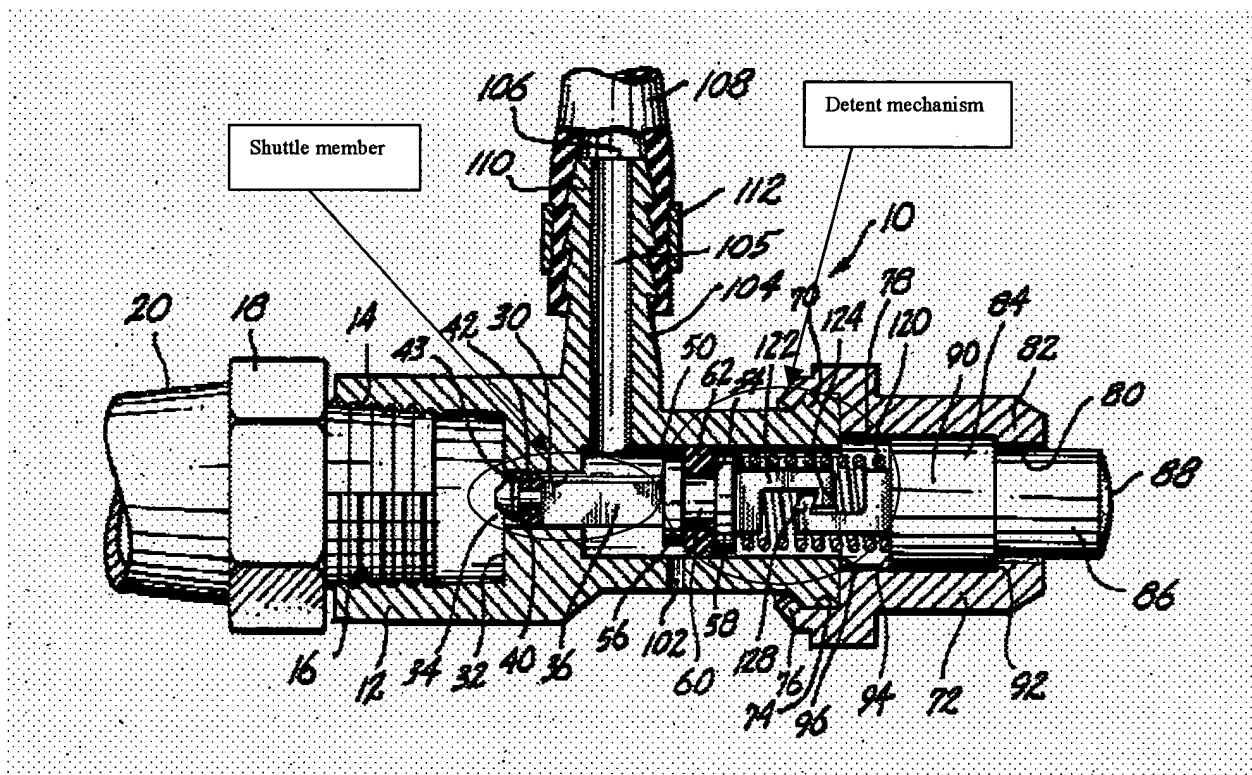
**DETAILED ACTION*****Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by **Green et al. (US 4,303,088)**.



The introductory phrase “controlling cycling of an oscillator, the oscillator utilizing air flow for providing pumping force to the pump and for controlling cycling of the pump” mainly recites the use or purpose of the claimed invention. However, it does not limit the claim and thus does not any patentable weight to the claim. Therefore, the only positively recited structural

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limitations recited in claim 33 are: a valve that has a valve member “shuttle member” and a mechanism “detent mechanism” that moves said valve member. These are inherent features of any typical valve which comprises a valve member that moves back and forth to open an inlet or close an outlet, which must inherently comprise some mechanism to move said valve member from the open position to the closed position and vice versa. For instance, one example is below.

**Green** teaches a valve comprising: a shuttle member for controlling air flow; and a detent mechanism for controlling movement “oscillation” of the shuttle member. See particularly **Figure 1** of Green.

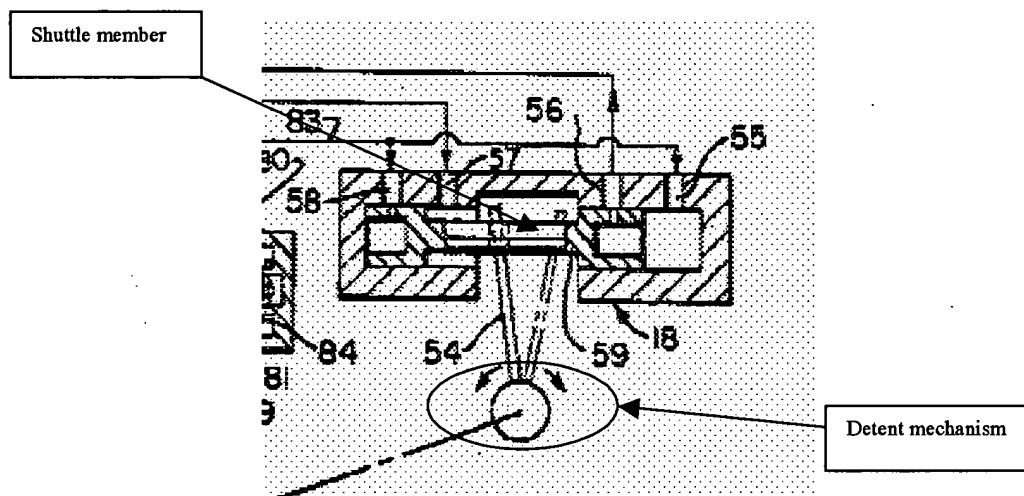
With regards to the intended use recitation “the detent mechanism permitting a user to change the rate of oscillation of the shuttle member such that the need for additional valves or controllers for regulating the rate of oscillation is eliminated”. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of the claims, as is the case here.

3. Claim 33 is rejected under 35 U.S.C. 102(b) as being anticipated by **Rupp** (US 3,741,689).

The introductory phrase “*controlling cycling of an oscillator, the oscillator utilizing air flow for providing pumping force to the pump and for controlling cycling of the pump*” mainly recites the use or purpose of the claimed invention. However, it does not limit the claim and thus does not any patentable weight to the claim. Therefore, the only positively recited structural limitations recited in claim 33 are: a valve that has a valve member “shuttle member” and a

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mechanism “detent mechanism” that moves said valve member. These are inherent features of any typical valve which comprises a valve member that moves back and forth to open an inlet or close an outlet, which must inherently comprise some mechanism to move said valve member from the open position to the closed position and vice versa. For instance, another example is below.



**Rupp** teaches a valve comprising: a shuttle member for controlling air flow; and a detent mechanism for controlling movement “oscillation” of the shuttle member. See particularly **Figure 1** of Rupp.

With regards to the intended use recitation “the detent mechanism permitting a user to change the rate of oscillation of the shuttle member such that the need for additional valves or controllers for regulating the rate of oscillation is eliminated”. A recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the structural limitations of the claims, as is the case here.

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***Allowable Subject Matter***

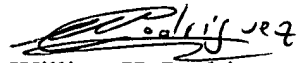
4. Claims 1-32 are allowed.

***Contact information***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William H. Rodriguez whose telephone number is 571-272-4831. The examiner can normally be reached on Monday-Friday 7:30 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Timothy S. Thorpe can be reached on 571-272-4444. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
William H. Rodriguez  
Examiner  
Art Unit 3746

9/23/05